



NEVADA COMMISSION ON ETHICS STAFF REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

REQUEST FOR OPINION NO. 07-32C
SUBJECT: PETER LIAKOPOULOS, MEMBER NYE COUNTY BOARD OF COMMISSIONERS

A. JURISDICTION:

In his capacity as a member of the Nye County Board of Commissioners, Peter Liakopoulos is a public officer as defined by NRS 281.4365. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

B. INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion (RFO) (complaint) 07-32C, received June 27, 2007 from Harley Kulkin (TAB B)
- Reviewed June 28, 2007 determination of lack of jurisdiction by the Commission on Ethics Executive Director; reviewed letter received July 9, 2007 from requester to Executive Director appealing the determination of lack of jurisdiction to a Commission panel; reviewed transcript of the panel's determination to accept jurisdiction; reviewed letter dated July 23, 2007 from the NCOE General Counsel to the requester regarding the Commission panel's acceptance of jurisdiction (TAB C)
- Reviewed response received August 3, 2007 from Peter Liakopoulos (TAB D)
- Street map, subdivision map, and photos of Higley Road near intersection of Higley and Charleston Park Road (TAB E)
- Interviewed Director of Nye County Public Works Department, Samson Yao, P.E.; received and reviewed the following documents from Mr. Yao (TAB F):
 - Nye County Board of Commissioners Public Agenda Request Form for the August 19, 2003 board meeting including petitions from KPVM-TV visitors and citizens of Pahrump requesting paving of roadways leading to the television station
 - Current procedure and petition form for processing requests & petitions for streets to be improved/chip sealed
- Reviewed e-mails, dated March 12, 2007, from Nye County Road Superintendent David Fanning to Commissioner Liakopoulos and Nye County Administration regarding agenda item for March 20, 2007 meeting to possible chip and seal of Higley Road (TAB G)
- Reviewed relevant May 21, 2007 panel proceeding and June 13, 2007 hearing materials regarding RFO no. 07-21C

C. RECOMMENDATIONS:

Based on the results of investigation, it is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of NRS 281.481(2).

SPECIFIC REASON:

Sufficient credible evidence does not exist to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether Mr. Liakopoulos violated the provisions of NRS 281.481(2).

D. SUMMARY OF REQUEST FOR OPINION (COMPLAINT):

The complaint, submitted by Harley Kulkin, alleges that Mr. Liakopoulos violated NRS 281.481(2). The following is the substance of the complaint:

As a member of the Nye County board of commissioners, Mr. Liakopoulos improperly used his position to bypass the required procedure for getting a roadway chip sealed when he voted to approve the chip sealing of the portion of Higley Road that leads to Channel 41. Mr. Liakopoulos derives most of his income from Channel 41; therefore, his conduct resulted in a benefit to himself and a benefit to Channel 41.

On June 13, 2007, Mr. Liakopoulos appeared before the Nevada Commission of Ethics (NCOE) relative to an allegation that he did not disclose sufficient information about his business relationship with Channel 41 when he voted to approve the chip sealing of Higley Road where Channel 41 is located (RFO no. 07-21C).

Mr. Liakopoulos was asked by the NCOE if there was a process for getting roadways paved in Nye County. He stated that there is not. He also stated that the county accepted Higley Road. His response was not truthful. Contrary to what Mr. Liakopoulos told the NCOE, a road commission meets once a year to consider paving requests. Residents must make paving requests by submitting signed petitions to the road commission. A roadway must be a county accepted road to be approved for chip sealing. Higley Road was not a county accepted road.

Mr. Liakopoulos used his position to bypass the paving petition process that every other resident must follow. Higley Road only has two developed lots where it was chip sealed, but there are several homes and commercial businesses located in the opposite direction on Higley Road that did not receive the benefit of the road being chip sealed.

E. SUMMARY OF SUBJECT'S RESPONSE:

Mr. Liakopoulos submitted a seventeen-page response to the complaint on August 3, 2007, along with many additional pages of exhibits. In his response, he requested that the complaint be dismissed in that it lacks credible evidence to support the allegation. Mr. Liakopoulos further asserted that he already appeared before the NCOE and answered to allegations on the same matter when the NCOE heard RFO no. 07-21C. He denied violating NRS 281.481(2), and stated that this allegation was dismissed during the previous panel proceeding relating to RFO no. 07-21C. The following is the substance of his response to the allegations:

He is aware of an informal annual procedure that the public works department uses to help the county board of commissioners in planning road improvement projects, but it is not the only way road improvements are completed. When special circumstances arise, it is common practice to improve roads outside of this annual process. No one from county administration, public works, road department, or the county board of commissioners objected to the chip sealing of Higley Road.

The county did not have all the width of road needed to chip seal the Higley segment. The landowners whose property fronts on that road segment were willing to dedicate, to the county, whatever property was needed to get the job done at no additional cost to the county.

Mr. Liakopoulos is being "tried" twice for the same allegations raised in RFO no.07-21C. The complaint is vague and ambiguous, and there is no credible evidence to show just and sufficient cause for the commission to hear this matter; therefore, this complaint must be dismissed.

F. RELEVANT STATUTES:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

* * * * *

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.¹

(b) "Unwarranted" means without justification or adequate reason.

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^{1, 2} **NRS 281.501(8):** As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

G. RESULTS OF INVESTIGATION:

The matter regarding the Higley Road improvement was heard by the Nye County Board of Commissioners during its March 20 and 21, 2007 meeting. This matter is listed on the meeting agenda as item 11h:

“Action – Discussion, deliberation and possible decision to: 1) accept the offer of dedication without agreeing to improve the road; 2) accept the offer conditional on the owner paying for the road improvements; 3) accept the offer and also agree to chip seal the road; or 4) reject the offer at this time of Higley Road from Charleston Park Avenue to the North for a distance of approximately 680' to the KPVM Channel 41 TV station.”

The March 20 & 21, 2007 meeting agenda information form on this item, approved for the agenda by the county manager on March 13, 2007, describes the action requested:

“A 40' wide road easement from Charleston Park Ave to the North for a distance of 680' along the western side of Higley Rd has been offered for dedication to the County with a request that the County then chip seal Higley over the length of this easement to the Channel 41 TV station.

“The options available to the Board in responding to this request include:

1. Accepting the offer of dedication without agreeing to improve the road
2. Accepting the offer conditional on the owner paying for the road improvements
3. Accept the offer and also agree to chip seal the road
4. Reject the offer at this time

The cost to the County for Option 3 is estimated to be approximately \$8,000.”

The agenda information form included offers of dedication of street/road right-of-way from James and Lorna Dorn, KPVM-TV and Vernon Van Winkle (president of KPVM-TV), property owners whose parcels are affected by the proposed street right-of-way dedications. The draft minutes of the March meeting indicate that, before discussion on this item took place, the following disclosure and statement was made:

“Commissioner Liakopoulos disclosed that he purchased time on Channel 41. He stated that he brought the item forward and felt that the item was long overdue.”

After discussion, Commissioner Eastley made a motion to approve chip sealing at \$8,000.00. Further discussion regarding the funding source took place. The minutes also record that “Commissioner Eastley commented on the importance of mass communication within the community and the dependability of that communication.” The motion passed with a vote of 5-0. This vote occurred on March 20.

The board of commissioners reconvened on March 21. Commissioner Borasky made a motion to reconsider the matter regarding the dedication and chip sealing of the roadway. Four of the five commissioners agreed to reconsider the matter. After a closed session discussion,

Commissioner Borasky requested that the county manager place the item on a future agenda for reconsideration.

In a letter dated April 30, 2007 to County Manager Ron Williams, Commissioner Borasky withdrew his request to have the matter placed on a future agenda for reconsideration. The chip and seal project for Higley Road was then considered to be approved.

At the June 13, 2007 NCOE hearing regarding RFO no. 07-21C, Mr. Liakopoulos responded to a question regarding the existence of a road improvement schedule when he stated, in part:

“I haven’t seen any specific plan . . . Whatever the road department comes up with, and they go in and say these are roads that we have got money to budget, and then they come before us and we work on them.”

During a meeting with Samson Yao, Director of Nye County Public Works Department, on July 30, 2007, the following information was ascertained by the NCOE investigator:

- The chip and seal program began in 2001.
- The current program for processing requests and petitions for streets to be improved/chip sealed was implemented when he came to the public works department in 2002.
- The program “invites” residents and businesses to participate in the road improvement process but is not mandated by ordinance or law; therefore, it is an administrative procedure and does not prohibit the public works department from conducting road improvement activities without a request or petition. This program was implemented to help better organize the department’s road improvement efforts. No petition has been denied but may have been deferred to the next fiscal year. Currently, the department improves thirty miles of roadway each year.
- Several road segments have been improved without a request or petition based upon location of roadwork equipment, connectivity of roadways based upon traffic volume and school bus movement, and environmental considerations due to airborne particulate matter caused by traffic on unimproved roads.
- In the case of the Higley Road segment, the public works department decided to initiate the road improvement by contacting a commissioner to support the project. Consideration for initiating the improvement was given to the fact that petitions to improve the road had been received by the public works department from interested parties over the last few years, the roadwork equipment was already in place due to the chip and seal improvements being made to Charleston Park Avenue, and the improvement cost of \$8,000 was justified.
- The total Pahrump valley road improvement budget for fiscal year 2007 was \$1.9 million.

In an August 3, 2007 e-mail response, Mr. Yao confirmed that the March 20, 2007 board of county commissioners agenda item regarding the Higley Road segment to be chipped and sealed was placed on the agenda at the request of public works department staff. A commissioner was requested to place the item on the agenda because the deadline for staff requested agenda items had passed. Public works department staff submitted the item to the county manager’s office and concurrently forwarded the item by e-mail to Mr. Liakopoulos. This was done to request his

support of the agenda item as a commissioner on behalf of the public works department. (During a meeting on August 3, 2007, Mr. Liakopoulos stated to the NCOE investigator that he did not remember receiving the e-mail from the public works department.)

H. CONCLUSION:

Allegations regarding NRS 281.481(2):

It has been established that Mr. Liakopoulos has an existing business relationship with Channel 41 and that the television station is located on the segment of Higley Road that was improved. However, even though Mr. Liakopoulos has a commitment in a private capacity to the interest of Channel 41, his motivation to bring this item forward stems from a request from the public works department to support this agenda item. There appears to be adequate reason for this item to have been brought forward at the March 20, 2007 board of county commissioners meeting. Since road crews would be working within proximity of Higley Road, the county received a financial benefit.

Based upon the findings of the investigation, Mr. Liakopoulos did not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. Mr. Liakopoulos' conduct appears to be warranted, considering the above-mentioned reasons for improving Higley Road. There is no evidentiary basis to support the allegation that Mr. Liakopoulos acted in violation of NRS 281.481(2).

I. RECOMMENDATIONS:

No credible evidence exists to substantiate a potential violation of NRS 281.481(2). Accordingly, it is recommended that the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Liakopoulos violated the provisions of NRS 281.481(2) regarding his actions taken at the March 2007 meetings.

PREPARED BY: Matt C. DiOrio **DATED:** AUGUST 4, 2007
MATT C. DI ORIO
SENIOR INVESTIGATOR